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# In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 70-5211

RADIE P. WRIGHT and CLARA LITTLE WRIGHT, on Their Own Behalf and as Next of Friend to Their Infant Child CLARENCE EDWARD, and JOHN DILLARD ATKINS, JR., and on Behalf of All Others Similarly Situated,

*Appellants,*

vs.

ELLIOT L. RICHARDSON, Individually and in His Capacity as Secretary of Health, Education and Welfare,

*Appellee.*

On Appeal from the United States District Court
for the District of Columbia

## BRIEF OF STELLA VAN GUILDER AND DOROTHY E. HOPKINS AS AMICI CURIAE ON BEHALF OF APPELLANTS

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## BRIEF OF STELLA VAN GUILDER AND DOROTHY E. HOPKINS AS AMICI CURIAE ON BEHALF OF APPELLANTS

## STATEMENT OF INTEREST OF AMICI CURIAE

Stella Van Guilder and Dorothy E. Hopkins respectfully file this joint brief as amici curiae in support of Radie P. Wright, et al., the appellants in docket number 70-5211, and in support of the proposition that beneficiaries of Old Age (retirement), Survivors, and Disability Insurance (OASDI) payments under Title II of the Social Security Act must be afforded the opportunity for an evidentiary

hearing prior to the termination, suspension, or reduction of OASDI payments. Thus, they seek reversal of the District Court judgment in this case insofar as it fails to provide for an opportunity for such a hearing. The requisite consents to the filing of this brief have been obtained and filed with the Clerk pursuant to Rule 42 of the Supreme Court Rules.

The interest of Stella Van Guilder and Dorothy E. Hopkins in this case arises from the fact that they are parties plaintiff to cases presently pending in the United States District Courts for the District of Minnesota and the Eastern District of Pennsylvania, respectively: *Van Guilder, et al. v. Richardson* (D. Minn. Civil No. 4-70-386); *Hopkins, et al. v. Richardson* (E.D. Pa., Civil No. 71-37). Their interest in this case is attested to by the fact that the Secretary of Health, Education and Welfare (hereinafter "the Secretary") in his appeal of the District Court judgment has alluded in his Jurisdictional Statement to both of their pending cases as demonstrating the significance of the issues in this case. *See* Appellant's Jurisdictional Statement in docket number 70-161 at page 7, footnote 8. Their interest is further attested to by the Secretary in that he has moved the courts in both of their pending cases for stays of proceedings to await the disposition of this case by the Court.

In their complaints the amici raise the issue of whether OASDI beneficiaries must be afforded the opportunity for an evidentiary hearing prior to the suspension or reduction of their payments, pursuant to section 204(a) of the Social Security Act (hereinafter, "Act"), 42 U.S.C. §404(a), in order to recoup alleged overpayments of such benefits. This case involves the constitutionality of the suspension, pur-

suant to section 225 of the Act, 42 U.S.C. §425, of Disability Insurance benefits without a prior evidentiary hearing. Although different sections of the Act are involved, amici contend that the broader due process issue is common to all the cases. The amici are particularly affected by the holding of the District Court in this case that presuspension evidentiary hearings are not required in Title II Disability Insurance cases and its suggestion that something analogous to the Social Security Administration's existing review procedure would satisfy the requirements of due process of law in such cases. Since it is the existing decision-making and review procedure which the amici attack as constitutionally deficient in their pending cases, they feel that an affirmation of the District Court judgment in this case would have an adverse bearing on their pending cases.

In their cases the amici have engaged in extensive discovery with reference to the Social Security Administration's decision-making and review procedure. In light of the fact that the District Court in this case found this procedure to be constitutionally sufficient amici feel that it is particularly appropriate to bring to the attention of this Court the results of their discovery. These facts will demonstrate that the Social Security Administration's present decision-making and review procedure is rife with error and unconscionable delay.

## ARGUMENT

The appeal in this case raises the issue of whether the Social Security Administration must afford an opportunity for an evidentiary hearing to Disability Insurance beneficiaries under Title II of the Social Security Act prior to the suspension of benefits pursuant to section 225 of the Act, 42 U.S.C. §425. This section allows the Secretary to suspend the payment of benefits upon the belief that the individual's disability might have ceased. The suspension is in effect until it is determined whether or not such individual's disability has ceased or until the Secretary believes that such disability has not ceased. 42 U.S.C. §425. Because a section 225 suspension is not an "initial determination", it is not reviewable. See 20 C.F.R. §§404.905(d), 404.906(b), and 404.909. Administrative review pursuant to the procedure set forth in 20 C.F.R., Part 404, Subpart J, may be had only after an "initial determination" terminating benefits on the ground that the disability has ceased.

The District Court held that,

> "The ex-parte suspension power granted to the Secretary by section 225 is summary adjudication that is inconsistent with the requirements of due process. A disability beneficiary must be given adequate notice and an opportunity to participate in the determination proceedings prior to the suspension of benefits." 321 F. Supp. 383, 386.

Accordingly, the Court declared section 225 of the Act to be unconstitutional and ordered the adoption of presuspension procedures which afford fundamental due process of law to Disability Insurance beneficiaries. With this conclusion the amici have no quarrel. They do dispute, how-

ever, the District Court's suggestion that some procedure analogous to that followed by the Secretary upon reconsideration of an administrative determination to terminate benefits[1] is constitutionally adequate if implemented prior to the suspension of benefits. 321 F. Supp. at 387, n. 18. Amici contend that the facts they have discovered reveal this procedure to be replete with errors and characterized by unjustifiable delay. The result of this procedure is that the aged, widows, orphans, and the disabled, whose chief source of income is likely to be Title II benefits, see *infra* at page 12, undergo months of severe hardship awaiting correction of administrative errors. Thus the amici take the position stated by Senior District Judge Matthews in his separate opinion below that nothing short of the opportunity for a hearing as outlined in *Goldberg v. Kelly*, 397 U.S. 254 (1970) would satisfy due process.

"The fundamental requisite of due process of law is the opportunity to be heard." *Grannis v. Ordean*, 234 U.S. 385, 394 (1914). The extent to which procedural due process must be afforded is influenced by the extent to which the aggrieved person may be "condemned to suffer griev-

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[1]The current procedures are set forth in 20 C.F.R., Part 404, Subpart J. The regulations therein provide that a party to an initial determination who is aggrieved by the determination may take a first appeal by requesting reconsideration thereof. 20 C.F.R. §404.910. The aggrieved party may submit additional material for purposes of the reconsideration decision, but he is afforded no opportunity to present his case in person or present witnesses or cross-examine witnesses on behalf of the Secretary. Only after he has waited for a reconsideration determination may an adversely affected beneficiary finally request an evidentiary hearing before an impartial hearing examiner. 20 C.F.R. §§404.916, 404.917. If the individual is aggrieved by the decision of the hearing examiner he may request review of the decision by the Appeals Council. 20 C.F.R. §404.940. Only after a final decision of the Secretary has been issued under this three-step procedure may the individual obtain judicial review thereof by commencing a civil action in a United States District Court. 42 U.S.C. §405(g).

ous loss", *Joint Anti-Facist Refugee Committee v. McGrath*, 341 U.S. 123, 168 (1951) (Frankfurter, J., concurring). The general principle is that governmental benefits may not be administratively terminated without a prior evidentiary hearing on contested issues of fact. *Goldberg v. Kelly*, 397 U.S. 254 (1970); *Bell v. Burson*, 402 U.S. 535 (1971); *Opp Cotton Mills v. Administrator*, 312 U.S. 126, 152-153 (1941). That principal is departed from only in emergency situations where, in light of the character of the interest infringed, the issue to be adjudicated, and the burden on the government of providing a hearing, the individual interest is outweighed by compelling government necessity.[2] The issue of when a hearing must be afforded is usually synonymous with the question of whether due process requires an opportunity to be heard. *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969). The opportunity must be to be heard "at a meaningful time and in a meaningful manner". *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965).

Viewed in light of the due process standards outlined above,[3] The Social Security Administration's present decision-making and review procedure fails to pass constitutional muster. It has totally failed to protect the rights of

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[2]See, e.g., *Ewing v. Mytinger & Casselberry, Inc.*, 339 U.S. 594 (1951) (seizure of mislabeled vitamin product); *North American Cold Storage Co. v. Chicago*, 211 U.S. 306 (1908) (seizure of food not fit for human use); *Yakus v. United States*, 321 U.S. 414 (1944) (adoption of wartime price regulations); *R.A. Holman & Co. v. SEC*, 299 F.2d 127 (D.C. Cir. 1962), cert. denied, 370 U.S. 911 (1962) (suspension of exemption from stock registration requirement); *Gonzales v. Freeman*, 334 F.2d 570 (D.C. Cir. 1964) (disqualification of a contractor to do business with the Government).

[3]Amici will make no extensive analysis of the constitutional standards in this case. They can add nothing to the excellent legal argument made by the Legal Aid Society of Alameda County in its amicus curiae brief filed in this case.

needy Title II Retirement and Survivors Insurance beneficiaries whose payments have been suspended pursuant to section 204(a) of the Act, 42 U.S.C. §404(a), in order to recoup alleged overpayments. Answers to Interrogatories by Social Security Administration personnel on behalf of the Secretary in the pending cases of *Van Guilder, et al. v. Richardson* (D. Minn., Civil No. 4-70-386) and *Hopkins, et al. v. Richardson* (E.D. Pa., Civil No. 71-37) and affidavits of Social Security Administration personnel filed therein demonstrate the high percentage of error in making initial determinations and the long delays through which persons whose benefits are suspended or reduced must suffer while awaiting administrative review.

The process regarding section 204 begins with an initial determination by the Secretary that an individual has received an overpayment. This is an *ex parte* determination. If at that time the individual is still otherwise entitled to receive current and continuing monthly benefits, action is taken to withhold a sufficient amount of current and continuing monthly benefits to recoup the alleged overpayment. Concurrent with such recoupment action, the individual is informed of his right to request reconsideration of the initial determination of overpayment and/or waiver of recovery [pursuant to section 204(b) of the Act, 42 U.S.C. §404(b)] of the overpaid amount.[4] In 1970 the Secretary made 1,250,000 initial determinations that beneficiaries under the retirement, survivors and disability insurance programs had received overpayments[5] and took approximately

[4]Answer, dated September 8, 1971, by Hugh F. McKenna, Director, Bureau of Retirement and Survivors Insurance, Social Security Administration, to plaintiffs' Interrogatory number 86 in *Van Guilder v. Richardson, supra.* The Interrogatory and Answer are set forth in the Appendix to this brief. See Appendix A.

[5]Affidavit of Hugh F. McKenna, dated November 1, 1971, in *Van Guilder v. Richardson, supra.* See Appendix B.

350,000 actions suspending or reducing benefits in order to recoup the alleged overpayments.[6] In the 1,250,000 overpayment determinations in 1970 there were approximately 12,000 requests for reconsideration of such initial determinations. Approximately 8,250 of those initial determinations were reversed upon reconsideration by the Secretary.[7] The median time for a reconsideration determination in the Retirement and Survivors Insurance Programs to be rendered after receipt of a reconsideration request was ninety-four (94) days in 1969.[8] In the Disability Insurance program the reconsideration processing time in February 1971 was a median eighty-six (86) and a mean ninety-nine and eight tenths (99.8) days.[9]

The above figures demonstrate the extent of injury to individuals under present Social Security Administration review procedures. Less than one (1%) percent of those persons whom the Secretary initially determined to have been overpaid in 1970 requested reconsideration. However, for the persons who challenged the Secretary's decision by requesting reconsideration there was approximately a sixty-nine (69%) percent reversal rate, almost double the thirty-six (36%) percent reversal rate the lower court in *Gold-*

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[6]Answer, dated October 28, 1971, by James V. Matarazzo, Technical Advisor, Bureau of Retirement and Survivors Insurance, Social Security Administration, to plaintiffs' Interorgatory number 20(c) in *Hopkins v. Richardson, supra.* See Appendix C.

[7]Affidavit of Hugh F. McKenna, dated November 1, 1971, in *Van Guilder v. Richardson, supra.* See Appendix B.

[8]Answer, dated June 11, 1971, by Hugh F. McKenna, to plaintiffs' Interrogatory number 66(b) in *Van Guilder v. Richardson, supra.* See Appendix D.

[9]Answer, dated June 11, 1971, by Hugh F. McKenna, to plaintiff's Interrogatory number 66(c) in *Van Guilder v. Richardson, supra.* See Appendix D.

*berg v. Kelly, supra,* found to be "a startling statistic". *Kelly v. Wyman,* 294 F. Supp. 893, 901 (S.D.N.Y. 1968). Those persons were forced to wait, with a chief source of their income gone, for over three (3) months *after* requesting reconsideration, for the Secretary to correct his error.

Of the 3,750 cases in 1970 where the reconsideration affirmed the initial determination of overpayment, there were approximately 1,600 requests for hearings. After hearings there were an additional 560 reversals,[10] a thirty-five (35%) percent reversal rate. The median time for hearing decisions to be rendered after receipt by a hearing examiner of a request for hearing was ninety-six (96) days in 1969 in the retirement and survivors programs and ninety-seven (97) days in the disability program.[11] Thus the beneficiaries in those cases were forced to wait at least an additional three (3) months for hearings after receiving unfavorable reconsideration determinations. In the average case then, these persons were forced to wait at least six (6) months, through two steps of the review process for determinations to be made that their benefits had been wrongfully suspended. This assumes, of course, that such persons immediately requested reconsideration after receiving notice of the initial determination of overpayment and immediately requested a hearing after receiving notice of an unfavorable reconsideration determination. The problem to

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[10] Affidavit of Hugh F. McKenna, dated November 1, 1971, in *Van Guilder v. Richardson, supra.* See Appendix B.

[11] Answer, dated June 11, 1971, by Hugh F. McKenna, to plaintiffs' Interrogatory number 67(h) in *Van Guilder v. Richardson, supra.* See Appendix E. Other figures indicate that the "lag time" for hearing examiner decisions in the disability program was one hundred fourteen (114) days in calendar year 1969. Dixon, "The Social Security Disability Program: A System in Crisis," Report to the Committee on Grant and Benefit Programs of the Administrative Conference of the United States, page 38 (October 27, 1971).

which this Court alluded in *Goldberg, supra,* may also exist here:

> ". . . termination of aid pending resolution of a controversy over eligibility may deprive an *eligible* recipient of the very means by which to live while he waits. Since he lacks independent resources, his situation becomes immediately desperate. His need to concentrate upon finding the means for daily subsistence, in turn, adversely affects his ability to seek redress from the welfare bureaucracy."
>
> *Goldberg v. Kelly, supra,* at 264.

The above figures outline only the performance of the Secretary's decision-making and review process on the substantive question of whether overpayments existed. It is also possible for a person initially determined to have been overpaid to request that the Secretary waive recovery of the overpayment pursuant to section 204(b) of the Act, 42 U. S.C. §404(b). In order to be eligible for waiver, the beneficiary must have been "without fault" in receiving the overpayment and recoupment would either be contrary to the purposes of Title II of the Act or be "against equity and good conscience". Out of the 350,000 recoupment actions taken by the Secretary in all programs in 1970 there were 18,520 requests for waiver. In 10,085 of those cases waiver of recovery of the alleged overpayment was granted.[12] Thus, fifty-four (54%) percent of these beneficiaries should not have suffered suspensions because they were entitled to waiver of recovery of the overpayment. Yet again,

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[12]Answers, dated July 21, 1971, by Robert P. Flynn, Acting Director, Bureau of Retirement and Survivors Insurance, Social Security Administration, to plaintiffs' Interrogatories 21(c) and 22(c) in *Hopkins v. Richardson, supra.* See Appendix F.

however, they were forced to wait long periods of time while seeking redress. The average time for an initial determination granting or denying waiver is an estimated eighty-five (85) days. An average of forty (40) days elapses from the date of an initial determination to undertake recoupment action to the date that the beneficiary requests waiver. An average of forty-five (45) days elapses between the date of a request for a waiver determination and the date such a determination is rendered.[13] Of the 8,435 requests for waiver that were initially denied in 1970, the Social Security Administration estimates that there were requests for reconsideration in five (5%) percent of the cases (422).[14] There was an additional twenty (20%) percent reversal rate of initial denials of waiver upon reconsideration (approximately eighty-three (83) cases).[15]

In defense of the review procedure outlined above and in support of the District Court decision in this case it might be argued that the existing procedures have served well to correct erroneous initial determinations by the Secretary and that something analogous to the reconsideration procedure might be instituted as a presuspension procedure in this case. The fact that the existing reconsideration procedure corrects many erroneous initial determinations provides little comfort to the persons who must make do without their benefits for an average of over three (3) months (if they act as promptly as possible) until a hear-

[13]Answer, dated October 28, 1971, by James V. Matarazzo, to plaintiffs' Interrogatory number 32 in *Hopkins v. Richardson, supra.* See Appendix G.

[14]Answer, dated October 28, 1971, by James V. Matarazzo, to plaintiffs' Interrogatory number 24 in *Hopkins v. Richardson, supra.* See Appendix H.

[15]Answer, dated October 28, 1971, by James V. Matarazzo, to plaintiffs' Interrogatory number 25 in *Hopkins v. Richardson, supra.* See Appendix I.

ing decision is rendered (where thirty-five (35%) percent of the Secretary's initial and reconsidered determinations are reversed favorably to the beneficiary).

The fact that Title II beneficiaries may have to go without their payments while awaiting an opportunity for a hearing is a crucial fact that this Court cannot ignore. As a practical matter, beneficiaries of Retirement, Survivors and Disability insurance benefits are just as dependent upon their benefits as were the welfare recipients in *Goldberg v. Kelly, supra.* OASDI beneficiaries are not dependant by *definition* upon benefit payments for their livelihood. However, just as this Court found that "A kind of 'need' is present in the statutory scheme for [unemployment] insurance . . . to the extent that any 'salary replacement' insurance fulfills a need caused by lost employment.", *California Dept. of Human Resources v. Java,* 402 U.S. 121 (1971), the District Court in this case found that "a disability beneficiary is by definition unable to engage in substantial gainful activity and he would, therefore, be liable to sustain grievous loss while awaiting the resolution of his claim." 321 F. Supp. at 386.

The same type of "need" that exists in the unemployment insurance and disability insurance programs exists in the retirement insurance program. The insurance benefits under that program act as a replacement for the income which the retired beneficiary no longer earns. "The hope behind this statute is to save men and women from the rigors of the poor house as well as from the haunting fear that such a lot awaits them when journey's end is near.", *Helvering v. Davis,* 301 U.S. 619, 641 (1937) (Cardozo, J.). The Social Security Administration has found that at the close of 1967 "Old-age, survivors, disability, and health

insurance (OASDHI), *as the basic income-maintainance program for the elderly in this country,* provided regular benefits to more than 5 million couples and 7.5 million nonmarried persons . . ." and that "[N]early half the couples and three-fifths of the nonmarried beneficiaries were practically without retirement income except for their [retirement insurance] benefit." Bixby, "Income of People Aged 65 and Older: Overview From 1968 Survey of the Aged", U.S. Dept. of H.E.W., Social Security Administration, Office of Research and Statistics, Report No. 1 (April 1970) page 3 (emphasis supplied). When the total income of this one-half to three-fifths of the aged is suspended or terminated, they are "driven to the wall" even more severely than the wage earner in *Sniadach v. Family Finance Corp., supra,* who in no event could be deprived of more than one-half of his income. 395 U.S. at 338, footnote 1.

Similarly, "need" exists for widows and orphans in the survivors insurance program to replace the income lost by the death of a breadwinner.[16] The Social Security Administration's 1963 National Survey of Widows with Children under OASDHI found that "OASDHI was the major source of income for almost two-thirds of the widowed families, and substantially improved the economic position of all of them", and that OASDHI survivors insurance benefits provided forty-six (46%) percent of the aggregate income for these beneficiary-family units in 1962. Palmore, Stanley, and Cormier, "Widows with Children under Social Security", U.S. Dept. of H.E.W., Social Security Administration,

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[16] "The general purpose of the old-age, survivor and disability insurance provisions of Title II of the Social Security Act is to protect workers and their dependents from the risk of loss of income due to the insured's old age, death or disability." *Delno v. Celebrezze,* 347 F.2d 159, 161 (9 Cir. 1965).

Office of Research and Statistics, Research Report No. 16 (1966) page 15. The same report found that widowed families who were beneficiaries of survivors insurance benefits had "at least one and one-half times the 1963 income of all female-headed families with a comparable number of children" and that "The most important single factor in the more favorable economic position of beneficiary families in comparison with all female-headed families was their income from survivor programs." Palmore, et al., *Ibid.*, page 31.

During the period of delay while seeking review of determinations terminating, suspending or reducing their benefits many beneficiaries must resort to welfare for their ordinary and necessary living expenses. Welfare conditions of eligibility are burdensome in most states—particularly for the aged.[17] Pennsylvania and Minnesota, for example, require applicants for Old Age Assistance to subject the homes they have worked all their lives to purchase to a lien for the amount of welfare paid to them.[18] Additionally Minnesota prohibits the payment of Old Age Assistance to any person if the net value of his property or the net value of the combined property of husband and wife exceeds ten thousand ($10,000) dollars.[19] Pennsylvania also requires suspended Social Security recipients to

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[17]There are lien requirements and "payback" requirements in 25 states. "Characteristics of State Public Assistance Plans Under the Social Security Act," U.S. Dept. of H.E.W., Public Assistance Report Number 50, 1970 Edition.

[18]Pennsylvania Support Law, Act of June 24, 1937, P.L. 2045, section 4, as amended, 62 Purdon's Stat. §1974; Pennsylvania Department of Public Welfare, Public Assistance Manual, Section 3820, et seq.; *Minnesota Statutes*, 1969, §256.26, subdivision 3; Minnesota Department of Public Welfare, Public Welfare Manual, section VII-2140, et seq.

[19]*Minnesota Statutes*, 1969, §256.18(2).

sue their sons and daughters for support before a welfare grant will be paid to them.[20]

It is entirely understandable, then, that many suspended Social Security recipients refuse to resort to welfare. Pennsylvania's Department of Public Welfare estimates that the Housing Lien alone deters over 100,000 otherwise eligible individuals from applying for welfare.[21] These recipients must somehow exist without the chief source of their income until the Social Security Administration gets around to correcting its error. This prospect also faces many who do not know that they are qualified to receive welfare, or are mistakenly told that they are ineligible when they apply.

If welfare recipients are accorded full hearing rights *before* their grants are adversely affected, it is very difficult to explain to a Social Security beneficiary—who relies just as heavily on his payment as does the welfare recipient on his grant, who has been compelled to pay the Social Security Payroll Tax for most, if not all his working life—that he does not have the same rights. Indeed, it is impossible to explain such a gross inequity. Inequities such as this no doubt contribute greatly to the "societal malaise that may flow from a widespread sense of unjustified frustration and insecurity." *Goldberg v. Kelly, supra,* at 265.

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[20]Pennsylvania Support Law, Act of June 24, 1937, P.L. 2045, section 3, as amended, 62 Purdon's Stat. §1973; Pennsylvania Department of Public Welfare, Public Assistance Manual, §§3234.6 and 3237.

[21]Staff Report, Governor's Housing Task Force, Commonwealth of Pennsylvania, "Better Housing: A Social Priority for Pennsylvania," page 49 (1969).

## CONCLUSION

The amici submit that the vital need which in fact exists for Title II retirement, survivors and disability insurance benefits, the great number of erroneous initial and reconsidered determinations affecting the receipt of those benefits, and the long delays involved in seeking administrative review of erroneous decisions mandate that the due process standard which should be applied in this case and in all cases involving the suspension, reduction and termination of Title II benefits be that of the opportunity for a hearing prior to such suspension, termination or reduction. Cf., *Goldberg v. Kelly, supra.* For the foregoing reasons, it is the prayer of amici that the judgment of the Court below be reversed insofar as it fails to require the opportunity for such a hearing.

Dated, Minneapolis, Minnesota December 6, 1971.

Respectfully submitted,

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# APPENDICES

## APPENDIX A

Answer, dated September 8, 1971, by Hugh F. McKenna, Director, Bureau of Retirement and Survivors Insurance, Social Security Administration, to plaintiffs' Interrogatory number 86 in *Van Guilder v. Richardson, supra.*

*Interrogatory #86*

Does the Secretary make a request for voluntary repayment from overpaid persons in the retirement and survivors programs whenever he makes an initial determination that a person receiving such benefits has been overpaid?

*Answer*

No . . . If, at the time of the initial determination of overpayment, the individual is still otherwise entitled to receive current and continuing monthly benefits, action is taken to withhold a sufficient amount of current and continuing monthly benefits to recoup the outstanding overpayment. Concurrent with such recoupment action, the individual is informed of his right to request reconsideration of the initial determination of overpayment and/or waiver of recovery of the overpaid amount.

## APPENDIX B

Affidavit of Hugh F. McKenna, dated November 1, 1971, in *Van Guilder v. Richardson, supra.*

I, Hugh F. McKenna, being duly sworn, depose and say as follows:

(1) I am the Director of the Bureau of Retire-

ment and Survivors Insurance of the Social Security Administration, and as such am responsible for the formulation of policies and procedures whereby retirement, dependent and survivors claims under Title II of the Social Security Act are adjudicated. As Director of the Bureau of Retirement and Survivors Insurance I am responsible also for the supervision of the Payment Centers of the Social Security Administration in their adjudication of Title II claims.

(2) In compliance with the court's order dated September 16, 1971, the Administration has developed estimates as follows:

(3) In 1970 the Social Security Administration made overpayments in approximately 1,250,000 cases.

(4) Of these 1,250,000 overpayments there were requests for reconsideration in approximately 12,000 cases.

(5) Of the 12,000 reconsideration determinations with respect to overpayments there were approximately 8,250 reversals and approximately 3,750 affirmances.

(6) Of the 3,750 reconsideration affirmances with respect to overpayments there were requests for hearing in approximately 1,600 cases.

(7) Of the 1,600 cases that went to hearing with respect to overpayments there were reversals in approximately 560 cases and affirmances in 1,040 cases.

## APPENDIX C

Answer, dated October 28, 1971, by James V. Matarazzo, Technical Advisor, Bureau of Retirement and Survivors Insurance, Social Security Administration, to plaintiffs' Interrogatory number 20(c) in *Hopkins v. Richardson, supra.*

*Interrogatory #20*

How many OASDI recipients had their benefits terminated, suspended or reduced by the Social Security Administration in order to recoup past alleged overpayments made to them:

(a) . . .

(b) . . .

(c) During 1970?

*Answer*

350,000 (estimate).

## APPENDIX D

Answer, dated June 11, 1971, by Hugh F. McKenna, to plaintiff's Interrogatory number 66(b) in *Van Guilder v. Richardson, supra.*

*Interrogatory #66*

During calendar year 1969 what was the average time which elapsed between the date of request for reconsideration of initial determination and date of reconsidered determination in cases involving initial determinations that individuals had received overpayment of:

(a) Old age insurance benefits.

*Answer*

See Interrogatory #66(b).

(b) Survivors insurance benefits.

*Answer*

Upon receipt of a request by a Retirement and Survivors Insurance Payment Center, the median time for additional evidentiary development to accord the claimant maximum consideration (usually evidence to be obtained directly from the claimant) is 74 days and the median time for a reconsideration determination to be rendered thereafter by the Social Security Administration is 20 days. These figures are with regard to elapsed times to process all issues on reconsideration, including reconsiderations of initial determinations of overpayments. Discrete data as to reconsiderations of determinations of overpayments solely is not compiled by the Social Security Administration.

(c) Disability insurance benefits.

*Answer*

Discrete data is not available. However, reconsideration processing time for *all* cases in February 1971 was a median 86 days; a mean 99.8 days. These figures would be representative of reconsideration elapsed times in 1969.

## APPENDIX E

Answer, dated June 11, 1971, by Hugh F. McKenna, to plaintiffs' Interrogatory number 67(b) in *Van Guilder v. Richardson, supra.*

*Interrogatory #67*

During calendar year 1969 what was the average time which elapsed between the date of request for hearing and date of hearing decision in cases involving reconsidered determinations that individuals had received overpayments of:

(a) Old age insurance benefits.

*Answer*

See Interrogatory #67(b).

(b) Survivors insurance benefits.

*Answer*

Discrete data is not available. However, upon receipt of a request for a hearing by the hearing examiner, the median time for a decision to be rendered is 96 days. This figure includes hearings of all retirement and survivors insurance issues.

(c) Disability insurance benefits.

*Answer*

Discrete data is not available. However, the average length of time between requests for hearings and the decision thereon in all disability cases in calendar year 1969 was 97 median days.

## APPENDIX F

Answer, dated July 21, 1971, by Robert P. Flynn, Acting Director, Bureau of Retirement and Survivors Insurance, Social Security Administration, to plaintiffs' Interrogatories 21(c) and 22(c) in *Hopkins v. Richardson, supra.*

*Interrogatory #21*

Of those OASDI recipients who had their benefits terminated, suspended or reduced by the Social Security Administration in order to recoup past alleged overpayments, how many requested that recoupment be waived under 42 U.S.C. §404(b):

(a) . . .

(b) . . .

(c) During 1970?

*Answer*

18,520.

*Interrogatory #22*

How many requests for waiver under 42 U.S.C. §404(b) were allowed:

(a) . . .

(b) . . .

(c) During 1970?

*Answer*

10,085.

## APPENDIX G

Answer, dated October 28, 1971, by James V. Matarazzo, to plaintiffs' Interrogatory number 32 in *Hopkins v. Richardson, supra.*

*Interrogatory #32*

What is the current average number of days elapsed:

(a) From the time of an Initial Determination to terminate, suspend or reduce benefits to the time that a recipient requests waiver under 42 U.S.C. §404(b)?

*Answer*

40 days (estimate).

(b) From the time a recipient requests waiver under 42 U.S.C. §404(b) to the time when an Initial Determination either allowing or disallowing his request is made?

*Answer*

45 days (estimate).

## APPENDIX H

Answer, dated October 28, 1971, by James V. Matarazzo, to plaintiffs' Interrogatory number 24 in *Hopkins v. Richardson, supra.*

*Interrogatory #24*

How many recipients, whose requests for waiver under 42 U.S.C. §404(b) were disallowed, requested Reconsideration of the Initial Determination to disallow their requests:

(a) During 1968?

(b) During 1969?

(c) During 1970?

(d) During the period January 1, 1971 to March 31, 1971?

*Answer*

Reference is made to paragraph 5c of the court's order to this Interrogatory. The Administration estimates that no more than 5 percent of the recipients, whose request for waiver were disallowed, petitioned for reconsideration of the initial determination disallowing such requests.

## APPENDIX I

Answer, dated October 28, 1971, by James V. Matarazzo, to plaintiffs' Interrogatory number 25 in *Hopkins v. Richardson, supra.*

*Interrogatory #25*

How many disallowances of request for waiver under 42 U.S.C. §404(b) were reversed upon Reconsideration?

(a) During 1968?

(b) During 1969?

(c) During 1970?

(d) During the period January 1, 1971 to March 31, 1971?

*Answer*

Reference is made to paragraph 5c of the court's order for answer to this Interrogatory.

The Administration estimates that no more than 20 percent of the disallowance of requests for waiver were reversed upon reconsideration.